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ABSTRACT

This document presents guidance for stopping discrimination, harassment, and violence against lesbian, gay, bisexual, and transgender (LGBT) students in schools. Section 1, "Lambda Legal Defense and Education Fund on the Legal Considerations for Creating and Changing Statewide Laws and Policies," discusses the various types of statewide laws and policies (civil rights statutes, education statutes, and education regulations or policies); implementation and enforcement of the varying types of statewide laws and policies; and arguments made against the promotion of laws to protect LGBT students (e.g., prohibiting discrimination on the basis of specified factors is wrong because it provides special rights). Section 2, "GLSEN on the Political Considerations for Creating and Changing Statewide Laws and Policies: What's Right for Your State?," presents guidance on mapping the terrain, law or policy options, and considerations that impact all approaches (e.g., religious and privately run institutions, gender identity, special rights or zero tolerance approaches, the importance of enumeration, and staying alert after the bill/policy passes). Three appendices present state regulations; the National School Climate Survey of the Gay, Lesbian, and Straight Education Network; and selected results from the 1999 CDC/Massachusetts Department of Education Youth Risk Behavior Survey. (SM)

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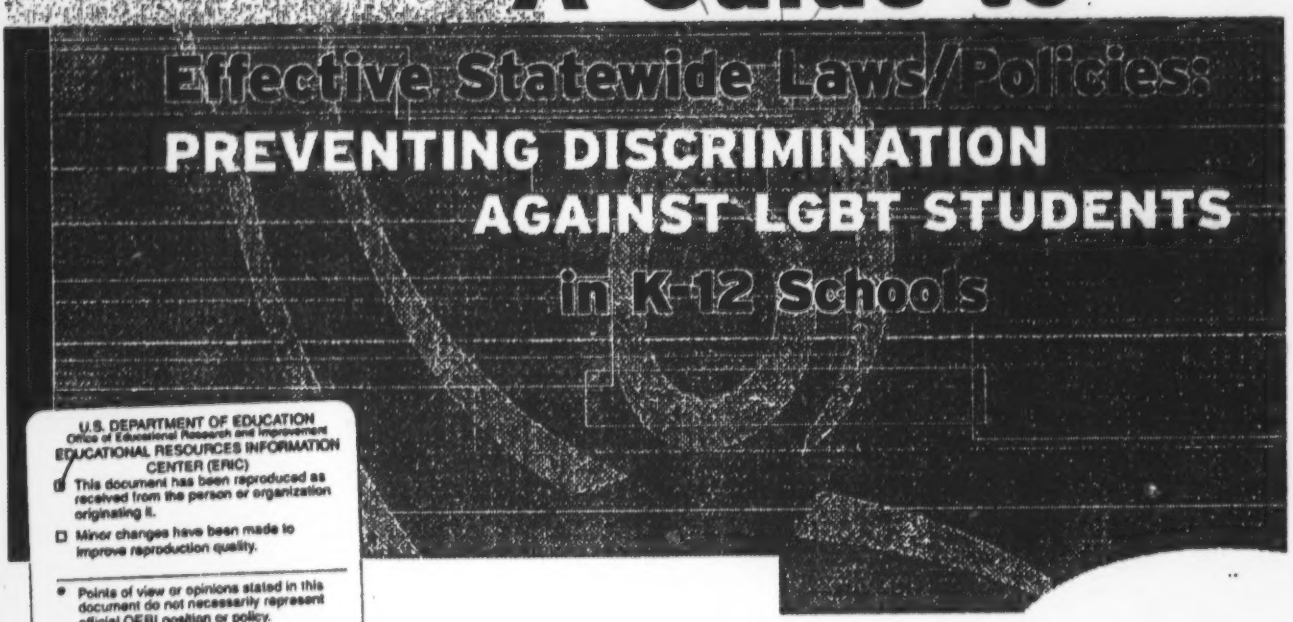
A Guide to

Effective Statewide Laws/Policies:

PREVENTING DISCRIMINATION AGAINST LGBT STUDENTS in K-12 Schools



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A GUIDE TO EFFECTIVE STATEWIDE LAWS/POLICIES: PREVENTING DISCRIMINATION AGAINST LGBT STUDENTS IN K-12 SCHOOLS

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INTRODUCTION

In working to stop discrimination, harassment and violence against lesbian, gay, bisexual and transgender (LGBT) students in schools, advocates have several choices for action. One choice involves creating or changing statewide laws and policies, which can have some of the most direct and positive impact on students and on school climate. This document is a part of our ongoing educational outreach to the youth and their advocates who struggle everyday in schools to get a safe and sound education. GLSEN and Lambda Legal Defense and Education Fund have joined forces to pool our expertise in this area of statewide laws and policies. First, Lambda presents the key legal considerations that should inform advocates' decisions about what actions to take at the state level. Then GLSEN fills in the legal framework with the important political considerations for advocates. These two informational pieces, when combined with the necessary consultation with those people in the state with knowledge and experience on the issues, form a solid launching pad for grassroots action. Remember, your grassroots work on statewide laws and policies can make an enormous difference in the lives of young people harmed everyday in our schools by anti-LGBT attitudes and attacks. We hope this resource provides information that makes your grassroots efforts as strategic and effective as possible.

1

LAMBDA LEGAL DEFENSE AND EDUCATION FUND ON THE LEGAL CONSIDERATIONS FOR CREATING AND CHANGING STATEWIDE LAWS AND POLICIES

THE VARIOUS TYPES OF STATEWIDE LAWS AND POLICIES

There are several different types of state laws and policies that can protect LGBT students from harassment and discrimination. For example, the protections can be in civil rights laws or education laws passed by the state legislature, or in regulations or policies adopted by the state's executive agency overseeing education, like a department of education (with a commissioner) or a state board of education. Below we will first illustrate the different kinds of legal protections, highlighting particular aspects, and then in a subsequent section we will provide a more in-depth discussion of those aspects. We selected these illustrative legal protections because of the key positive aspects they contain, but they should not be taken as ideal in all respects. For the advocate working to create or modify a bill or policy, the approach should be to take what is positive for students and leave behind what is negative, which means avoiding an uncritical wholesale adoption of any existing bill or policy.

CIVIL RIGHTS STATUTES

(for example, Minnesota and New Jersey)

Protections for students may exist in a state's "civil rights" statute, which can cover many areas other than education, such as housing and employment. The states' legislatures pass these laws. The only state in the nation with such a general civil rights law that prohibits both sexual orientation and gender identity discrimination against students in schools is Minnesota, and the prohibition applies expressly to both public and private schools (see Appendix A). New Jersey is an example of a state with a general public accommodation statute prohibiting sexual orientation discrimination against students in public schools (see Appendix A).

Minnesota also added a provision that is helpful to consider for inclusion in any law or policy under consideration. The provision empowers the state's human rights commission to:

> develop such programs as will aid in determining the compliance throughout the state with the provisions of this chapter, and in the furtherance of such duties, conduct research and study discriminatory practices based upon . . . sexual orientation, or other factors and develop accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life. . . .(see Appendix A).

Creating programs to aid with compliance will make any law or policy more effective, because it gives students, parents, and educators the tools to understand and comply. Similarly, generating government data on the nature and extent of discrimination is very helpful, because it addresses the sense by many policy-makers that there is no problem, and lays a foundation for improved law or policy in the future. These tasks of creating programs and generating data may be extended as well to a state department of education, or, as a matter of policy, may be voluntarily adopted by such a department.

EDUCATION STATUTES

(California, Connecticut, Massachusetts, Vermont, Wisconsin)

Protections may also exist in a state's "education" statutes, which are specific to the schools in the state. The states' legislatures also pass these laws. The first state to ever pass such a law prohibiting sexual orientation discrimination was Wisconsin, followed by Massachusetts, Connecticut, and California (see Appendix A). The California statute also prohibits discrimination on the basis of "gender," by cross-referencing its hate crimes statute (see Appendix A). In Vermont, the legislature passed a statute prohibiting "harassment" on the basis of sexual orientation (see Appendix A).

Vermont's statute also adds provisions that increase its effectiveness by directing school boards to:

- develop procedures for implementing the statute;
- provide notice of the policy and procedures to students, custodial parents or guardians of students, and staff members, with age-appropriate language for students and examples of harassment;
- publish the notice in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school; and
- develop and initiate age-appropriate programs to effectively inform students about the substance of the policy and procedures.

Further, the statute directs the state's commissioner of education to develop and periodically update model harassment prevention policies for school districts (see Appendix A). These added provisions increase the effectiveness of the statute by adding affirmative steps that must be taken.

EDUCATION REGULATIONS OR POLICIES

(Rhode Island, Pennsylvania)

Lastly, protections may exist in regulations or statements of policy by the agency that oversees the state's public education, like the department of education or a statewide board of education. Regulations are commonly what a governmental agency creates to implement the mandate that created the agency. Policies can play a similar role for an agency, and they may be easier to issue than a regulation, but they may also have less impact. Pennsylvania's statewide Board of Education issued a regulation providing "that educational programs shall be provided without discrimination on the basis of . . . sexual orientation . . . ." (see Appendix A). In Rhode Island, the Department of Education issued a policy statement providing "that no student shall be excluded from, discriminated against, or harassed in any educational program, activity or facility in a public school on account of sexual orientation or perception of same" (see Appendix A).

IMPLEMENTATION AND ENFORCEMENT OF THE VARYING TYPES OF LAWS AND POLICIES

As already suggested by the prior discussion, a host of factors determine how effective a state law or policy will be in creating safe and nurturing school environments. But our experience since Lambda's victory in the Nabozny case in Wisconsin, which was the first case to establish monetary liability for a school's failure to stop anti-gay abuse by students, makes clear that the potential for such liability can be an enormous factor in helping parents to stop the harassment and/or discrimination against their child. Regrettably, school officials too often refuse to respond to pleas for them to do what is right, but the possibility of losing money moves them. Thus it is important to consider what exactly the "enforcement" or "implementation" mechanisms are for any law or policy, and whether it permits private individuals to sue for money or other effective deterrents or remedies.

This is not to say that a law or policy without enforcement in a court of law is meaningless. A sound policy statement against discrimination, like that in Rhode Island, has the possibility to have a meaningful impact on a state's schools. This is particularly so if the policy delineates concrete steps for action by schools as do the statutes in Minnesota, Vermont, and Wisconsin. For example, some of those concrete steps give meaningful notice of the policy to students, parents, and teachers with specific examples of what is prohibited or create programs to aid in compliance, generating data about ongoing discrimination. But it is important to consider that such policies often depend on the good will and effectiveness of whomever it is that must carry out the policies—the law or policy may take effect, but it could also be ignored. Moreover, policies are more susceptible to rescission, especially as top education officials change over time or with changes in the governing political party. These are some of the considerations to review with those activists and attorneys in the state with the appropriate experience to evaluate the advantages and disadvantages of the various approaches, and the limits imposed by political reality.

Below is a checklist that may be helpful for that review.

- Does the law/policy expressly provide a student with recourse in a court of law or a human rights commission and with a remedy in monetary damages (as in Minnesota and New Jersey)?
- Does the law/policy provide a student with some alternative avenue of enforcement, like an administrative appeal process that rises above the school district to the state department of education or its equivalent (as in Wisconsin), and is that process meaningful or largely a waste of time (perhaps because it acts primarily as a rubber stamp)?
- Are there specific and mandatory steps for action by school officials to take in order to comply with the statute, like developing procedures, giving good notice of the policy/procedures, and providing trainings (as in Vermont)?

- Does a department of education, commissioner, superintendent, or state board of education have the mandate—"shall" instead of "may"—to develop and distribute sample policies and procedures for compliance with the law/policy by school districts (as in Vermont), or to develop programs to aid districts in compliance (as in Minnesota)?
- If there is little or no enforcement for the law/policy (perhaps because there was a perceived lack of evidence of harassment/discrimination), is there nonetheless a provision to promote future improvement in the law/policy by directing a state agency or official to conduct research on discrimination in schools (as in Minnesota)?

LANGUAGE MATTERS

The Difference Between Harassment and Discrimination

Statutes that prohibit harassment are extremely helpful (as in Vermont), because student-on-student verbal and physical harassment is a major source of harm to students. But the benefit of the broader prohibition, against not only harassment but also discrimination (as in all the other states reviewed in this section), is important to keep in mind. For example, a school official may bar a lesbian student or a transgender student from participating in the finals for the national debate competitions because the student's presence may, in the official's perception, reflect badly on the school. An anti-discrimination prohibition may address this, because the facts involve a school official acting unfairly; an anti-harassment prohibition would likely not address those facts, because they do not involve verbal or physical harassment. But at the same time, it may be that a politically realistic assessment of the state by the best informed people suggests that pursuit of an anti-discrimination law/policy is out of reach, whereas an anti-harassment law/policy is feasible.

Perceived Sexual Orientation

Many students suffer discrimination because they are *perceived* to be LGB, even if they are not, or even if their sexual orientation is unknown. This discrimination is nonetheless wrong, and should be unlawful. Anti-gay abuse is harmful even when the targeted person is non-LGB, because such abuse can significantly interfere with a targeted student's ability to learn. This harm is common for an array of non-LGB students, including the children of lesbian and gay parents, the friends of LGB students, and transgender students, whose gender identities are often confused with sexual orientation. Thus, to make certain there is no doubt that discrimination on the basis of perceived sexual orientation is also unlawful, the law should expressly reflect that. New Jersey addressed the issue by defining sexual orientation as heterosexuality, homosexuality or bisexuality "*or being perceived, presumed or identified by others* as having such an orientation" (emphasis added) (see Appendix A). Note: New Jersey's definition of sexual orientation includes additional language, not set forth here, that is problematic; we recommend the simple and straightforward definition of sexual orientation as "actual or perceived heterosexuality, homosexuality, or bisexuality."

Transgender Students

Transgender students often suffer discrimination because of their gender identities, which is reflected in a growing trend of laws and policies around the country that explicitly address this form of harmful discrimination. Generally, there are three approaches to addressing the discrimination through statutory reform:

(1) separately enumerating the factor of "gender identity" either as a completely separate category or as an expressly stated subset of sex discrimination;
(2) explicitly clarifying that the definition of "sex" and/or "gender" includes "gender identity"; or
(3) amending the definition of "sexual orientation" to include "gender identity."

The first approach makes a law's coverage of gender identity discrimination most clear. Readers who look at a civil rights statute usually look first at the provision that enumerates the types of discrimination forbidden by the law, and that is the provision that is most often quoted in materials, like a school's employee manual or student handbook. Many local anti-discrimination laws have used this approach of adding gender identity to the list of factors that are an impermissible basis for discrimination.

The second and third approaches would include gender identity discrimination by explicitly folding it into the definition of sex (or gender) or sexual orientation in the definitional section of the statute. One example at the state level is California's "education" statute, which prohibits discrimination on any basis enumerated in the state's hate crimes statute. The hate crimes statute includes "gender," defining it broadly (though somewhat convolutedly) (see Appendix A). The definition of sex or gender in a statute could, more straightforwardly, be made to include one's gender identity, whether or not that identity corresponds to the designation made at birth.

In Minnesota's general "civil rights" law, the definition of sexual orientation includes "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness" (see Appendix A). Although this approach achieves the goal of gaining anti-discrimination protection for those targeted on the basis of gender identity, it also confuses that identity (a matter of one's self-definition) with sexual orientation (a relational characteristic defined by one's orientation, sexually, toward others).

For a helpful background on these examples and the additional considerations for success, see Paisley Currah & Shannon Minter, *Transgender Equality, A Handbook for Activists and Policymakers* (2000). (Published by the National Center for Lesbian Rights and the National Gay and Lesbian Task Force and available at www.ngltf.org/library/index.cfm.)

Private and Charter Schools

Given the large number of students who are or will be in private and charter schools, it is important to consider whether to extend anti-discrimination laws to such schools. That can be a matter of how schools are defined in the law generally, or a matter of a separate provision for

private/charter schools. In Minnesota, the civil rights statute prohibits LGBT discrimination in educational institutions, which it defines to include both private and public schools (Appendix A). In Massachusetts and Wisconsin, the education statutes have separate provisions that expressly prohibit charter schools from discriminating on the basis of several enumerated categories, including sexual orientation (see Appendix A).

ERRONEOUS ARGUMENTS TO ANTICIPATE

Often opponents of safe schools laws argue that prohibiting discrimination on the basis of specified factors (like gender identity or sexual orientation) is wrong because it provides "special rights." But as the U.S. Supreme Court stated in the Romer case, which challenged Colorado's constitutional bar to LGB people obtaining protections against discrimination: "[w]e find nothing special in the protections . . . . [t]hese are protections taken for granted by most people either because they already have them or do not need them . . . ."

Faced with the compelling point that each and every child is entitled to a safe and non-discriminatory school in which to get a sound education, anti-LGBT forces often declare that it is unnecessary to have any categories for protection at all, because all harassment and/or discrimination should be banned. It is true that all harassment and discrimination that interferes with a child's ability to participate in school and get an education should be banned, and general rules of conduct on the school campus often do so. But there is a long-standing history of state laws enumerating specific forms of harassment and discrimination that we know exist and need to be eliminated. As the Court stated in Romer: "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply." Otherwise, discriminators may believe that their particular bias is acceptable under state law, even if all harassment/discrimination is barred as a general matter, because they cannot imagine that the state's prohibition actually extends to their particular bias. This is especially true for anti-LGBT bias, because it is less common to have LGBT rights laws, so educators frequently assume that sexual orientation and/or gender identity are not covered by general conduct rules, and view the targeted student as the problem rather than the discrimination as the problem. State laws and policies that specify categories of protection leave no doubt as to what is covered.

2

GLSEN ON THE POLITICAL CONSIDERATIONS FOR CREATING AND CHANGING STATEWIDE LAWS AND POLICIES: WHAT'S RIGHT FOR YOUR STATE?

MAPPING THE TERRAIN

Before launching into a process of law or policy reform, advocates first need to understand the complex network of decision-makers who are involved in making and implementing education policy. Since policymaking power in education largely rests at the state and local (rather than at the federal) levels, the arenas we are concerned with are found in state capitols and local school districts. The diagram included in this section (see page 14) presents a simplified flowchart of this decisionmaking process and its various players. In reviewing it, advocates should note the following critical points.

1. **Who makes law or policy?** With some exceptions, education policy is made by state and local elected officials. Thus, the critical points of entry into the law or policymaking process are state legislatures, whose laws establish the guidelines for all districts in the state, and local school boards, whose policies govern activities in their jurisdiction. Passing a state law will have more comprehensive effects than would a local policy but, as noted later, advocates may be forced by political reality to concentrate on "friendly districts" that are winnable when statewide victory seems unlikely. It is important to note that local policy may go beyond state laws by conferring rights above and beyond those delineated by state legislation. For example, a local policy might expand an existing state anti-discrimination code to include categories unprotected by legislative action, such as sexual orientation and gender identity. However, local policies cannot take away rights conferred by legislators. For example, a local board cannot pass a policy that takes away protections based on sexual orientation and gender identity if these have already been made law at the state level. The beginning point of any strategy development must be an analysis of the "power players" in education, what their stances are on LGBT issues, and what kind of leverage or access you have with them.
2. **The distinction between who sets law or policy and who implements it.** Once laws are enacted through state legislation, or a local school board passes policies, the process of implementation is delegated to individuals or bodies that are hired or appointed. On the state level, implementation falls to an appointed or possibly elected state superintendent of education or public instruction, who then delegate to departmental personnel. On the local level, school boards hire a superintendent, who then delegates authority to central office administrators and individual school principals. As much as a state bureaucrat or district superintendent might wish to protect LGBT people in their schools, their ability and power to do so in many states is often limited or expanded by the actions of the elected officials. In either case, these individuals often have enormous latitude for action but within a highly constricted sphere of power. They can possibly put in place policies not expressly spelled out by law, but often this occurs only as a result of pressure from community groups, elected officials or others. Overall, the most important fact to know here is that these implementers play an extremely important role once any law has been passed—they put in place the actual procedures/guidelines and overall details that can make the effect of the law to reduce harassment and discrimination either real or negligible.

3. **The anomalous role of state boards of education or state board of public instruction.** Given the widely disparate nature of the powers granted to these boards, advocates need to carefully investigate the scope of authority held by the board in their particular state. Usually appointed, but sometimes elected, state boards generally play a supplemental role to legislatures. While they may have some latitude to set policies and influence implementation after a law is put in place, state boards usually don't have the kind of power that legislatures or local school boards or superintendents do to make policy decisions. As discussed later, political reality in your state may mean that these bodies are your best targets. Advocates must always keep in mind that state boards or superintendents and commissioners are likely the least powerful of the three policymaking authorities in the education arena.

So, where to start? Before beginning an assessment of your resources and an analysis of the pros and cons of different policy strategies, we would like to offer the following equations for activists to use as basic frameworks:

(Your ability to sway policymaking body)(The scope of power) = The greatest change

What does this equation mean? In short, this formula for success is one where there is a law or policymaking body, which you can influence, that has significant policymaking power. Although further research about the specifics of your state policymaking process is undoubtedly needed, as noted above, legislatures have the most power while boards of education may have the least. Now, let's examine the "ability to sway" variable which is shaped by the following equation:

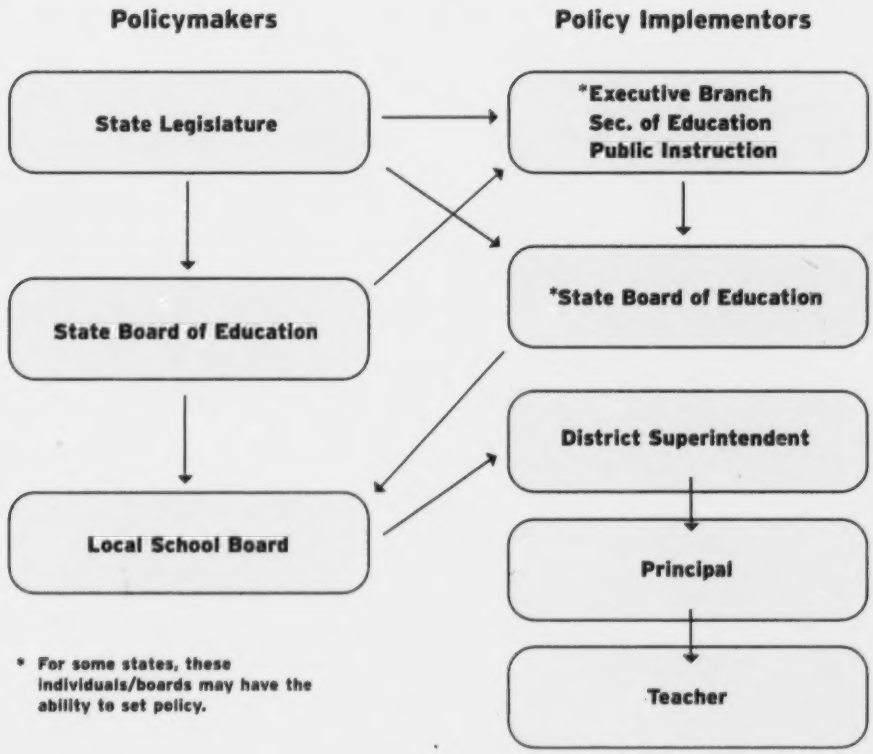
(Your resources)(Their political stance) = Your ability to sway policymakers

If your analysis—a detailed assessment tool to perform such analysis is provided in the next section—shows you have the resources to influence policymakers who are neutral or inclined to support you, you have significant "power to sway." This might be one scenario for you:

(Your resources, i.e. a strong coalition and an energized grassroots network)(Their political stance, i.e. a progressive majority in state legislature) = A good law!

In order to determine decisionmakers' stances, some factors to consider are:

- The current stance and political history of your state's governor on LGBT issues;
- The overall composition of your state's legislature and the likelihood of passage in either or both houses;
- The attitude of key legislative leaders, such as education committee chairs, who often have life or death power over bills in their purview; and
- The current stance and political history of appointed education policymakers (such as commissioners or secretaries of education or public instruction, or boards of education) on LGBT issues.



To assess your resources, list out the following things.

1. Start with research. Every state has significant political and procedural issues that make it different from other states, including the presence or absence of LGBT-specific laws, the histories of successful and unsuccessful legislative efforts, the make-up of the state legislature and the education statutes or policies already in existence.
2. Identify by name which decisionmakers can enact your goal.
3. Assess your organizational considerations, including your group's current resources and what resources your group hopes to gain by the end of the campaign. These may include: staff, funds, volunteers, leaders and key relationships to support your issue campaign.
4. A good campaign will identify your natural constituency and allies. Identify your statewide political/advocacy LGBT organization that lobbies in the state capitol. Add local or statewide safe schools coalitions including LGBT and non-LGBT organizations that would be concerned with school safety (examples include PFLAG, NAACP, NEA or AFT affiliates, cultural community centers, youth groups, youth drop-in centers, religious organizations—the list is only limited by imagination). Ask these coalition partners to bring to the table email lists, phone trees, mailing lists and other means of communicating with grassroots community members.

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5. Identify individuals or organizations who will actively oppose your efforts in order to be prepared for their attempts to stop you with money, ads and testimony.
6. Use tactics that will both educate the community-at-large and show your power to the officials you are seeking to influence. These include letters to the editor, op-eds, petitions, letters, post cards, emails, rallies, lobby visits and more.

Having researched your state's current statutes and policies, and identified what your organization or coalition can bring to the table for your issue campaign, then you can move on to analyzing which option is best for your state.

LAW OR POLICY OPTIONS

Although it is instrumental to the LGBT civil rights movement to aspire to the "ideal" law, it is also important to consider what you can realistically and politically expect to get enacted in your state. In this section, we'll examine the factors you need to take into account in deciding which avenue to pursue as you seek to insure equal access to educational opportunity for LGBT students in your state.

CIVIL RIGHTS STATUTES

(for example Minnesota, New Jersey)

There are two possible avenues to explore when considering civil rights statues. The first is to identify if your state has a general civil rights law that includes sexual orientation and/or gender identity but does not yet prohibit discrimination against K-12 students. The second would be if your state has a civil rights law that covers K-12 schools, but does not include sexual orientation and gender identity. In either case, you will want to add the piece which is currently absent. To do this, you will need to identify if you have the grassroots base and political will to consider opening these laws up to add education or provisions to address sexual orientation or gender identity discrimination. Consider, as you approach allied organizations and individuals, that opening the law up for additions may inadvertently open it up for more scrutiny and the possibility of oppositional forces rolling back key sections.

Because of its comprehensive nature, a general civil rights law that includes sexual orientation and gender identity, and is applicable to K-12 schools, may be an attractive option. If this is the route you choose in pursuing a new law, make sure the legislation is drafted to include clear language that incorporates educational institutions into its "public accommodations" statute. Or, if you are joining pre-existing efforts to pass a broad-based civil rights law, you'll want to confirm that education institutions are, indeed, covered. If they are not, proceed cautiously, so as not to undermine the progress the bill has made thus far.

The key to passing broad-based legislation is broad-based support. In states with little political support and/or history of enacting legislative protections for LGBT people, such legislation may require many years of organizing, education, and lobbying before passage becomes likely. Such a comprehensive campaign can help to build public awareness and organizational capacity. It can

also be frustrating and demoralizing, as victory may be a far-off goal. In such instances, bill supporters need to understand that a bill may have to be re-introduced for many years for it to make headway toward passage. If that is the case, the organization that pulls together the coalition to pass such a bill will need to build-in continuous smaller victories, such as increasing the number of co-sponsors and moving the bill through committee hearing, to sustain grassroots energy and support.

EDUCATION STATUTES

(California, Connecticut, Massachusetts, Vermont, Wisconsin)

Education statutes are more narrowly tailored than "civil rights" laws, in that they apply only to educational institutions, which is both their strength and their weakness. The advantage of a narrowly focused education-only law is clear. Given the high priority attached to education, as well as the post-Columbine concern about "safe schools," advocates may get a receptive hearing from legislators who, though not yet otherwise sympathetic to LGBT concerns, are concerned with making sure that each child can get an education in a safe and violence-free school. A narrow focus on a limited issue—education—also allows advocates to focus their public education efforts and lobbying strategy in a way not possible when a broader range of issues is being addressed. The compelling need for action can be demonstrated in many ways, including through the moving testimony of students, teachers, and parents who have suffered anti-LGBT bias in schools, giving the issue an emotional intensity that is hard to duplicate. Nonetheless, focusing on education specifically, of course, gives opponents the chance to play the "promoting homosexuality in schools" card (see more on this later), and advocates need to recognize this and be prepared to clarify the purpose and scope of legislation.

Given the attractiveness of this option, some caveats must be borne in mind by advocates. First, education—like other governmental functions—is often the fiefdom of a narrow range of legislators (often found on the education committee) whose support is critical. Be sure to identify these decisionmakers and win their support early in the process. In some states, the opposition of a single education committee chair has killed bills that otherwise had widespread support in the legislature. Second, keep in mind the concerns about accountability and implementation as outlined in the legal section. Due to the nature of education policymaking, legislatures may want to be "hands off" on implementation and not spell out specific measures, thereby leaving it up to state bureaucrats and local authorities. Be sure implementation measures and responsibilities are clearly delineated in the law that is passed, or you may win a hollow victory.

An additional concern is the scope of the legislation. Opponents, and even some supporters, may seek to narrow education bills from addressing non-discrimination to being solely focused on anti-harassment provisions. An anti-harassment measure may seem more politically palatable (after all, who is "for harassment?") and thus more likely to pass, but may also create political sand traps. After all, a harassment-free environment is not the same as a discrimination-free environment where all students can fully participate in school life. By inadvertently creating the appearance

that the problem has been "solved," an anti-harassment bill could actually set back the cause of addressing the many obstacles that stand between LGBT students and equal educational opportunity. This is not to take away from the political reality that anti-harassment legislation may be all that may be achieved at this point in time in your state, and it is an important step in the direction of immediate relief for LGBT students who face daily harassment and isolation.

EDUCATION REGULATIONS OR POLICIES

(Rhode Island or Pennsylvania)

As noted in the legal section, education regulations and policies are generally the least powerful of the three legal remedies to the problem of anti-LGBT bias in our schools. Nevertheless, political conditions in some states may make this the most attractive or indeed the only possible avenue for short or medium term change. In states where large segments of elected officials are hostile and unlikely to change, comprehensive legislation may be unlikely. However, a sympathetic superintendent of public instruction may be willing and able to take action to issue a policy, or an appointed statewide board of education may be willing and able to make policy that compels schools to "do the right thing" by LGBT students. In communities with extremely limited resources for lobbying and activism, advocates may also find it more realistic to focus on a single official or small number of appointed officials to lobby and educate.

For this avenue to yield the greatest possible impact, however, advocates need to take care to try to ensure that such regulations or policies are accompanied by clear actions to guarantee meaningful implementation. (See the legal section for a more thorough analysis.) State departments of education, for instance, can provide training and other forms of assistance to local districts in implementing their policies or regulations, and advocates should work hard to ensure that any policy or regulatory change includes the provision of resources dedicated toward that end.

The regulatory or policy route has obvious advantages in states where passing statewide legislation is unlikely. Because these afford some kind of protection and a basis for change, their enactment is very useful. But it is important that advocates pursue this avenue as simply the first step in a long-term strategy to enact more comprehensive, durable, and enforceable protections. Advocates must do a careful assessment of the likelihood of potentially devastating backlash when pursuing this route. If such backlash can be contained, however, the enactment of education policies may serve as an important incremental step in broader changes toward the safety of all students. The enactment of administrative policies may also prove that the claims of dire consequences by opponents are groundless, and can serve to develop important allies among appointed or elected officials who later can be powerful advocates for local or statewide legislation. And, if documentation of discrimination is a task built into the policy or regulation, as is recommended in the legal section, there will be a record on which to push for legislative change later.

CONSIDERATIONS THAT IMPACT ALL APPROACHES

PITFALLS AND OPPOSITION

There are some important potential problem areas that you should be aware of once your bill is in play in the legislature.

In the battle to pass civil rights laws or education laws, opponents may accuse activists of having an "agenda" of "promoting homosexuality" in schools, and may offer proponents a bargain in which passage is predicated upon the removal of these provisions specific to K-12 schools. To counter this red herring, it is critical to draw parallels to existing laws with which the public is familiar in order to help them properly understand the scope and nature of the legislation in question. Many may feel reluctant to support a law that seems to require schools to teach students that "gay is good." The reality is, this is not what non-discrimination laws do. For example, we protect students from discrimination based on religious identity, but do not teach that any particular religion (whether it is Catholicism or Judaism or Islam) is "good." Non-discrimination policies ensure equal access for all students regardless of religious heritage, and teach students to respect their peers, regardless of whether or not they agree with or share their peers' religious identity or beliefs. Similarly, protecting students from discrimination based on sexual orientation and gender identity does not require schools to teach that being LGBT is "good" or "right." Rather, it guarantees that schools must provide a safe, orderly and equitable environment in which all students can learn, regardless of who they are and how they identify.

RELIGIOUS AND PRIVATELY RUN INSTITUTIONS

For all of the approaches, opponents may attach riders which exempt religious and privately-run institutions (including schools) from compliance. This may result in thousands of students being exposed to continued harassment and discrimination without basic protections. This number may expand if the pro-voucher movement—which places public school students and monies in private and sectarian schools—advances. Ideally, advocates would make sure that policies are comprehensive and cover all schools so that we do not leave thousands of students adrift in schools that are "outside the law" once it is passed. Advocates should note, however, that efforts to do so may bring about opposition from religious institutions that might otherwise have been unconcerned with the bill.

GENDER IDENTITY

In addition, opponents or even proponents may seize upon "gender identity"—a category with which the public and elected officials arguably have even less familiarity and/or understanding than they do "sexual orientation"—and try to delete it from legislation or use it as a basis to discredit efforts for change. Some pragmatists might wish to narrow the scope of the bill to cover some schools or to make other compromises in the name of winning something right now. Dropping such provisions may strip the bill of protections that are vital for thousands of students.

It is critical that proponents not fall for this gambit, as legislators may feel that they have "solved" the problem of inequality by voting for such legislation, and may be reluctant to revisit those left out of the already-enacted legislation. It is simply better strategy to craft a more inclusive bill from the outset and fight to keep it so, so that all community members and their allies can support the bill from its inception. As we well know, one way to derail legislation is to break apart a coalition of natural allies who then focus anger on each other, rather than on fighting a system that needs changing. A coalition can best prepare for this by having thorough discussion before a critical decision arises, to identify what are acceptable compromises and what are not.

SPECIAL RIGHTS OR "ZERO TOLERANCE" APPROACHES

Another line of attack may occur as opponents argue that various types of legislative and policy options are "special rights" or "special protections" for LGBT people. In addition, they might argue that spelling out any particular category (but especially sexual orientation and/or gender identity) is unnecessary as we should "protect everyone." Similarly, opponents and even supporters may seek to delete specific enumeration of all classes from legislation under the same argument. These so-called "zero tolerance" policies sound attractive but may provide little real meaning. Advocates must educate elected officials and the public that there are real needs that can only be addressed by enumerating specific categories, as has been done with race and religion. This is different from the concept that all anti-LGBT harassment and discrimination should be dealt with swiftly and uniformly, a sort of zero tolerance for anti-gay epithets and actions. Also, there are concrete reasons why we have specific enumerated categories. It is not to afford "special rights" to protected groups but to remedy a pattern of discrimination which has denied equal opportunity to those groups—because of their membership in the category in question. Otherwise, as discussed in the legal section, discriminators may believe that their particular bias is acceptable, even if all harassment/discrimination is barred as a general matter, because they cannot imagine that the prohibition actually extends to their bias. Moreover, it is important to confront the "special rights" arguments with the reminder that sexual orientation discrimination laws or polices protect those perceived to be straight against discrimination as well.

THE IMPORTANCE OF ENUMERATION

The 2001 GLSEN School Climate Survey (see Appendix B) found that 84% of LGBT students "sometimes" or "frequently" heard homophobic remarks at their schools, such as "faggot" or "dyke." Also, 91% reported also hearing the expression "that's so gay" or "you're so gay" used as a derogatory term. Students reported that such remarks often went unaddressed by school faculty or staff - 40% reported that faculty or staff never intervened when they were present and another 42% reported that they intervened only some of the time when present. Other students were less likely to intervene—94% of the LGBT youth in the survey reported that other students never intervened or intervened only some of the time. This is at variance with patterns where epithets involving categories of impermissible discrimination protected under the law, such as race and religion, are used, as intervention is much more common. Clearly educators do not necessarily intervene unless they are

given clear expectations that they must do so. Without enumeration of specific classes and the establishment of specific remedies, legislation ends up being largely meaningless. A feel-good, "zero-tolerance" policy does, however, have enormous political appeal when presented as treating everyone equally in the way an enumerated policy may not seem to do, and can seduce many an uneducated legislator or citizen into supporting it. Advocates need to be prepared for stealth arguments that undermine the need for specific enumeration and thus gut legislative efforts to extend meaningful protections to LGBT students.

When asked to extend protection to students who are LGBT, some may argue, "What's next—freckled kids, or left-handed kids? Don't all kids get teased in school for something? Where does this stop?" When confronted with this superficially reasonable argument, it is important to remember that civil rights protections are intended to address a pattern of profound harassment, violence and/or discrimination. Where students are losing their opportunity to get an education and are being driven out of school because they belong to a particular category of people, then yes, emphatically, there should be sufficient concern to consider legal protections. The fact is, what LGBT students face is not "teasing," but a pattern of harassment and discrimination that has been proven to deny them an equal chance to get an education. Given this pattern, we must provide clear and specific rules for students and educators to follow so that equal opportunity is afforded to all, regardless of sexual orientation or gender identity. If similar patterns are found with regard to other categories or groups, we are morally compelled to support their inclusion as well—that is why we have enumerated categories in the first place. The argument that we are protecting too many people is an unacceptable reply to a demonstrated need for protections against persecution.

STAYING ALERT AFTER THE BILL/POLICY PASSES

For the law or policy that is passed to be felt in the classroom, you should take care to make sure that either implementation measures, or the responsibility for developing and implementing such measures, are clearly delineated in the legislation. If implementation is delegated to a specific official or department, you'll also need to have a follow-up strategy to keep the heat on those responsible for taking meaningful action "post-passage." Too often we see passage of a law as the beginning of the end of the fight for equality; history shows us though that it is the end of the beginning, as the implementation of a law often determines whether or not it has any real impact at all. Make sure someone is accountable for specific steps to implement the law in your state's schools, or nothing may change at all. Given the enormous pressures on their time and energy, implementers or administrators may not do the right thing just because a piece of paper tells them to. Once policies with clear accountability are in place, advocates must keep the heat on, as these issues can easily slip off the front burner.

A word on backlash toward legislators or policy makers who want to ensure that LGBT concerns are expressly covered in any legislation. Depending on the political climate in your state or community, any type of positive LGBT legislation can be used against our allies to threaten their

jobs either if they are under contract or need to run for re-election. An effective law or policy needs activists and community members to stay alert and supportive of our friends long after the vote has passed or the policy has been crafted. Our vigilance and support over time makes it easier to convince legislators and policy makers that they can do the right thing without fear of reprisal.

A final strategy note to consider is what to do when statewide legislation is not attainable any time soon. When this is the case advocates may choose to pursue a dual-track approach of working on the long-term goal of state legislation by building a broad stable base of support, while also pursuing policy change in local districts that offer immediate relief for many students. In many states the majority of the state's students attend a small number of large districts. In such districts, school boards and authorities may be more receptive to change than legislators. Winning change at this level not only provides immediate relief to students in those districts but also allows advocates to demonstrate that the roof did not fall in on a given school system once protections were enacted. It can also build alliances with current elected officials serving on school boards, and with superintendents of districts and local education leaders who can testify about the need and efficacy for statewide legislation. This incremental approach has the advantage of winning immediate protection for many students while building support for universal protection down the road.

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As the old adage says, "change is a process, not an event," and the winning of meaningful legal protections that insure equal educational opportunity for LGBT students is no exception to this rule. Advocates must weigh many factors in choosing the right course of action for their state. Legal ideals must be balanced against political reality in choosing which avenue, as politics is the "art of the possible." Multiple strategies—including local policy change, the enactment of policies by appointed officials, and the education of state legislative and executive leaders—may all need to happen simultaneously in order to bring closer the day when comprehensive statewide protections are a reality.

In the end, cold, hard political calculus must be performed to develop a strategy that insures change in our schools. But perform it we must, as the well-being of students today—and the health of our communities tomorrow—depends on what is happening in our schools right now.

CONCLUSION

GLSEN and Lambda Legal hope the information herein is helpful to your important efforts to use statewide laws and policies to combat discrimination, harassment and violence against LGBT students in our schools. Feel free to contact us for further assistance. Our contact information is on the inside front cover.

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APPENDICES

APPENDIX A

CALIFORNIA

Cal. Educ. Code § 220 (West 1994)

No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

Cal. Penal Code § 422.6(a) (West 1999)

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

Cal. Penal Code § 422.76 (West 1999)

For purposes of Section 186.21, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

CONNECTICUT

Conn. Gen. Stat. Ann. §10-15c(a) (West 1996)

The public schools shall be open to all children five years of age and over who reach age five on or before the first day of January of any school year, and each such child shall have, and shall be so advised by the appropriate school authorities, an equal opportunity to participate in the activities, programs and courses of study offered in such public schools, at such time as the child becomes eligible to participate in such activities, programs and courses of study, without discrimination on account of race, color, sex, religion, national origin or sexual orientation; provided boards of education may, by vote at a meeting duly called, admit to any school children under five years of age.

MASSACHUSETTS

Mass. Gen. Laws Ann. ch. 76, § 5 (West 1996)

Every person shall have a right to attend the public schools of the town where he actually resides, subject to the following section. No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, religion, national origin or sexual orientation.

Mass. Gen. Laws Ann. ch. 71, § 89(l) (West 2000)

Charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language or a foreign language, and academic achievement. Charter schools may limit enrollment to specific grade levels and may structure curriculum around particular areas of focus such as mathematics, science, or the arts.

MINNESOTA

Minn. Stat. Ann. § 363.01 (West 1991)

Subd. 14. Discriminate. The term "discriminate" includes segregate or separate and, for purposes of discrimination based on sex, it includes sexual harassment.

Subd. 15. Educational institutions. "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system and a business, nursing, professional, secretarial, technical, vocational school; and includes an agent of an education institution.

Subd. 45. Sexual orientation. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness.

Minn. Stat. Ann. § 363.03(Subd. 5) (West 1991)

Educational institution. It is an unfair discriminatory practice:

(1) To discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability, or to fail to ensure physical and program access for disabled persons. For purposes of this paragraph, program access includes but is not limited to providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services. Program access does not include providing

attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(2) To exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability.

Minn. Stat. Ann. § 363.05(Subd. 1) (West 1991)

Duties of commissioner. Formulation of policies. The commissioner shall formulate policies to effectuate the purposes of this chapter and shall: . . .

(15) develop such programs as will aid in determining the compliance throughout the state with the provisions of this chapter, and in the furtherance of such duties, conduct research and study discriminatory practices based upon race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, familial status, sexual orientation, or other factors and develop accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life;

(16) develop and disseminate technical assistance to persons subject to the provisions of this chapter, and to agencies and officers of governmental and private agencies...

NEW JERSEY

N.J. Stat. Ann. § 10:5-5

(l) "A place of public accommodation" shall include, but not be limited to . . . any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education, or the Commissioner of Education of the State of New Jersey.

(hh) "Affectional or sexual orientation" means male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.

N.J. Stat. Ann. § 10:5-12(f)(1)

It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination: For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof.

PENNSYLVANIA

Pennsylvania Board of Education Rules and Regulations § 5.4(c), reprinted in 22 Pennsylvania Bulletin 2323 (1992).

It is the policy of the Board that educational programs shall be provided without discrimination on the basis of race, sex, color, religion, disability, sexual orientation or National origin.

RHODE ISLAND

Department of Education, State of Rhode Island and Providence Plantations, A Policy Statement of the State Board of Regents Prohibiting Discrimination Based on Sexual Orientation.

On file with Legal Counsel Office 401-222-4600 x2503.

The Rhode Island Board of Regents for Elementary and Secondary Education recognizes that full access of all people and groups to educational opportunities and full participation in educational experiences should be the policy and practice of educational agencies. All individuals and groups must be afforded the opportunity to participate fully and thereby reach their maximum potential. Barriers to student participation which are based on sexual orientation must be identified and removed.

Certain students, because of their actual or perceived sexual orientation, have been subject to discrimination through abuse, harassment, or exclusion from full participation in educational activities. These conditions undermine the goals of Civil Rights activities in education; i.e., to remove barriers, promote nondiscrimination and support the provision of equal educational opportunities. The Board also recognizes that all students without exception have the right to come to school and feel safe.

Therefore it is the Policy of the Board of Regents that no student shall be excluded from, discriminated against, or harassed in any educational program, activity or facility in a public school on account of sexual orientation or perception of same. This policy shall apply to admissions, guidance, recreational and extra-curricular activities as well as all public educational programs and activities.

Each local school district is urged to review programs, services, and activities to assure that such offerings are conducted in a manner that is free of inadvertent or intentional bias. Each local school district is also urged to prohibit harassment based on sexual orientation through the development and enforcement of appropriate student and staff behavior and disciplinary policies.

Staff of Rhode Island Department of Education will be available to assist school districts in the development and implementation of appropriate policies consistent with the Regents' Policy Prohibiting Discrimination Based on Sexual Orientation.

VERMONT

Vt. Stat. Ann. tit. 16, § 11(26) (West, WESTLAW through end of 1999 adjourned session)

"Harassment" means unlawful harassment which constitutes a form of discrimination. It means verbal or physical conduct based on a student's race, creed, color, national origin, marital status, sex, sexual orientation or disability and which has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive environment. Sexual harassment is also a form of unlawful harassment and means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

(A) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education.

(B) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

(C) The conduct has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive educational environment.

Vt. Stat. Ann. tit. 16, § 565 (19xx) (West, WESTLAW through end of 1999 adjourned session)

(a) It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil and positive learning environments. Harassment, hazing and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Each school board shall develop, adopt, ensure the enforcement of, and make available in the manner described under subdivision 563(1) of this title harassment and hazing prevention policies which shall be at least as stringent as model policies developed by the commissioner. In this section, the definitions of educational institution, organization, pledging, and student shall be the same as those in section 151 of this title.

(1) The harassment prevention policy shall include:

(A) A statement prohibiting harassment of a student.

(B) The definition of harassment pursuant to subdivision 11(a)(26) of this title.

(C) Consequences and appropriate remedial action for staff or students who commit harassment.

(D) A procedure that directs students and staff how to report violations and file complaints.

(E) A procedure for investigating reports of violations and complaints.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to harassment.

(2) The hazing prevention policy shall include:

(A) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited.

(B) A procedure that directs students and staff how to report violations and file complaints.

(C) A procedure for investigating reports of violations and complaints.

(D) Circumstances under which hazing may be reported to a law enforcement agency.

(E) Appropriate penalties or sanctions, or both, for organizations which or individuals who engage in hazing, and revocation or suspension of an organization's permission to operate or exist within the institution's purview, if that organization knowingly permits, authorizes, or condones hazing.

(F) A description of how the board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to hazing.

(c) Each school district shall establish rules setting forth procedures for dealing with harassment and hazing of students which include:

(1) Annual designation of two or more people within the institution to receive complaints and a procedure for publicizing those people's availability.

(2) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(3) A statement that acts of retaliation for reporting of harassment or for cooperating in an investigation of harassment is unlawful pursuant to subdivision 4503(a)(5) of Title 9.

(d) Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this section to students, custodial parents or guardians of students, and staff members. Notice to students shall be in age-appropriate language and should include examples of harassment and hazing. At a minimum, this notice shall appear in any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for the school. The board shall use its discretion in developing and initiating age-appropriate programs to effectively inform students about the substance of the policy and procedures in order to help prevent harassment, and hazing.

(e) The commissioner shall develop and, from time to time, update model harassment and hazing prevention policies.

WISCONSIN

Wis. Stat. Ann. § 118.13 (West 1999)

(1) No person may be denied admission to any public school or be denied participation in, be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because of the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

(2) (a) Each school board shall develop written policies and procedures to implement this section and submit them to the state superintendent as a part of its 1986 annual report under s. 120.18. The policies and procedures shall provide for receiving and investigating complaints by residents of the school district regarding possible violations of this section, for making determinations as to whether this section has been violated and for ensuring compliance with this section.

(b) Any person who receives a negative determination under par. (a) may appeal the determination to the state superintendent.

(3) (a) The state superintendent shall:

1. Decide appeals made to him or her under sub. (2)(b). Decisions of the state superintendent under this subdivision are subject to judicial review under ch. 227.
2. Promulgate rules necessary to implement and administer this section.
3. Include in the department's biennial report under s. 15.04(1)(d) information on the status of school district compliance with this section and school district progress toward providing reasonable equality of educational opportunity for all pupils in this state.

(b) The state superintendent may:

1. Periodically review school district programs, activities and services to determine whether the school boards are complying with this section.
2. Assist school boards to comply with this section by providing information and technical assistance upon request.

Wis. Stat. Ann. § 118.40(4)(b)(2) (West 1999)

A charter school may not . . . [d]iscriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

APPENDIX B
GLSEN'S NATIONAL SCHOOL CLIMATE SURVEY

INTRODUCTION & METHODOLOGY

First conducted in 1999, the National School Climate Survey is the only national survey to document the experiences of lesbian, gay, bisexual and transgender (LGBT)students in America's high schools. It examines the prevalence of school-based harassment and victimization, the frequency with which LGBT students hear homophobic language, and the factors that contribute to or detract from an overall feeling of comfort and safety. In 2001, GLSEN nearly doubled the sample of the original study. This year, a total of 904 LGBT youth from 48 states and the District of Columbia completed the survey. In order to create a more representative sample of all LGBT youth in schools, GLSEN employed two methods of obtaining participants. In the first, youth were accessed through community based groups or service organizations serving LGBT youth, which were randomly selected from a list of over 200 such groups nationwide. Each group was then invited to participate and surveys were subsequently sent for youth to complete. The National School Climate Survey was also made available on the Internet via GLSEN's website. Notices about the online survey were posted on LGBT youth-oriented listservs and electronic bulletin boards, and were emailed to GLSEN chapters and youth advocacy organizations. Data collection through community-based groups occurred from the end of May to the middle of August 2001. Data collection through the online version occurred from June to the middle of August 2001. Additional information about methodology and demographics, as well as full results, are available online at www.glsen.org.

HOMOPHOBIC REMARKS

As in 1999, the overwhelming majority of LGBT students reported hearing homophobic remarks; faculty and staff contributed to the problem either by making homophobic comments themselves or failing to intervene when they heard students making them.

- 84.3% of LGBT students reported hearing homophobic remarks, such as "faggot "or "dyke," frequently or often.
- 90.8% reported hearing the expression "that's so gay,"or "you're so gay," frequently or often.
- 23.6% reported hearing homophobic remarks from faculty or school staff at least some of the time.
- 81.8% reported that faculty or staff never intervened or intervened only some of the time when present when homophobic remarks were made.

HARASSMENT AND ASSAULT

The study showed that verbal, sexual and physical harassment are common experiences for LGBT students. For LGBT youth of color, and for female students, this abuse is often compounded by racism and sexism.

In the past year:

- 83.2% of LGBT students reported being verbally harassed (name calling, threats, etc.) because of their sexual orientation;
- 48.3% of LGBT students of color reported being verbally harassed because of both their sexual orientation and their race ethnicity;
- 65.4% of LGBT students reported being sexually harassed (sexual comments, inappropriately touched, etc.);
- 74.2% of lesbian and bisexual young women reported being sexually harassed;
- 73.7% of transgender students reported being sexually harassed;
- 41.9% of LGBT students reported being physically harassed (being shoved, pushed, etc.) because of their sexual orientation;
- 21.1% of LGBT students reported being physically assaulted (being punched, kicked, injured with a weapon) because of their sexual orientation;
- 31.3% of LGBT students reported experiencing physical harassment based on their gender expression; and
- 13.7% of LGBT students reported experiencing physical assault based on their gender expression.

FEELING SAFE IN SCHOOL

The majority of LGBT students reported feeling unsafe at school, and they were likely to skip class or even days of school out of fear for personal safety. Transgender students were the least likely to feel their school communities were places of safety.

- 68.6% of LGBT students reported feeling unsafe in their school because of their sexual orientation.
- 89.5% of transgender students reported feeling unsafe based on their gender expression.
- 31.8% of LGBT students had skipped a class at least once in the past month because they felt unsafe based on sexual orientation.
- 30.9% had missed at least one entire day of school in the past month because they felt unsafe based on sexual orientation.

LGBT students attending public, private and parochial schools felt varying degrees of safety based on sexual orientation

- 70.4% of public school students reported feeling unsafe.
- 65% of private religious school students reported feeling unsafe.
- 51.2% of private secular school students reported feeling unsafe.

Similarly, LGBT students from urban, suburban and rural schools felt varying degrees of safety based on sexual orientation.

- 62.2% of students from urban schools reported feeling unsafe.
- 70.7% of students from suburban schools reported feeling unsafe.
- 75.9% of students from rural schools reported feeling unsafe.

LGBT RESOURCES AND SUPPORTS IN SCHOOL

Many schools fail to recognize the abuse faced by LGBT students. As a result, resources and supportive personnel are rare. Yet, where available, a statistically significant number of LGBT students felt a greater sense of belonging at school.

- 80.6% of students reported that there were no positive portrayals of LGBT people, history or events in any of their classes.
- 38.1 % of students who said they had positive portrayals of LGBT people, history or events in their classes were more likely to feel they belonged in the school than those who did not (38.1% versus 29.0%).
- 39.7% of students reported that there were no teachers or school personnel who were supportive of LGBT students at their school.
- Students who said that they had a supportive faculty or staff were more likely to feel they belonged in their school than those who did not (35.1% versus 25.6%).
- 31.1% of students reported that their schools had a gay-straight alliance (GSA) or another type of club that addresses LGBT student issues.
- Students who said their schools had GSAs were less likely to feel unsafe in their schools then those who did not (62.9%versus 72%).

CONCLUSION

The results from this 2001 National School Climate Survey echo the findings from our 1999 survey: for many of our nation's LGBT youth, school can be an unsafe and even dangerous place. School is where homophobic remarks can be frequently heard, often by faculty and staff. The majority of the youth in our survey reported being verbally harassed because of their sexual orientation or their gender expression and a large number of youth reported experiencing incidents of physical harassment, physical assault and sexual harassment. The findings from this survey also demonstrate that transgender students feel particularly vulnerable at school.

GLSEN's 2001 National School Climate Survey has also documented that certain schools are providing resources that can improve the quality of life for LGBT students. Some of the youth reported that their schools have gay-straight alliances and that LGBT people, history and events are being mentioned in classroom curricula. Nevertheless, the number of youth reporting such resources is far outweighed by the number of youth reporting acts of harassment or victimization. Perhaps most importantly, our results document that more work needs to be done to make all of our nation's schools safe for all students.

The complete survey may be obtained either by calling GLSEN at (212) 727-0135 or by visiting the News section of www.glsen.org.

APPENDIX C

SELECTED RESULTS FROM THE 1999 CDC/MASSACHUSETTS DEPARTMENT OF EDUCATION YOUTH RISK BEHAVIOR SURVEY

FACTOR	OTHER RESPONDENTS	LGB AND/OR YOUTH REPORTING SAME GENDER EXPERIENCE
	(96%)	(4%)
SAFETY		
was threatened with or injured by a weapon at school in past 12 months	6.6%	28.1%
was in a physical fight at school in past 12 months	12.4%	24.1%
had property stolen or deliberately damaged at school	26.8%	42.9%
has missed at least one day of school because s/he felt unsafe in past 30 days	4.0%	18.0%
SELF-ENDANGERMENT		
has ever used hallucinogens	6%	46%
has ever used marijuana	50%	77%
has ever used cocaine	7%	33%
has been pregnant or gotten someone pregnant	12%	24%
has seriously considered suicide in past 12 months	22%	54%
has made suicide plans in past 12 month	18%	41%
has actually attempted suicide at least once in past 12 months	8%	37%
has attempted suicide and had to be treated by Dr/Nurse in past 12 months	3%	19%